Supreme Court, U.S.
FILED
NOV 14 1995

No. 95-254

In the Supreme Court of the United States

OCTOBER TERM, 1995

THE AMERICAN LEGION, ET AL., PETITIONERS

v.

JESSE BROWN, SECRETARY,
DEPARTMENT OF VETERANS AFFAIRS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly sustained the Secretary of Veterans Affairs' conclusion that he had the statutory authority to terminate a study of the human health effects of wartime exposure to herbicides such as Agent Orange.

2. Whether the Secretary's decision to terminate the study, on the ground that it was infeasible to design and conduct it in a way that would yield scientifically valid results, was arbitrary, capricious, or an abuse of discretion.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-29a) is reported at 54 F.3d 789. The opinion and order of the district court (Pet. App. 30a-49a) are reported at 827 F. Supp. 805.

JURISDICTION

The judgment of the court of appeals was entered on April 25, 1995. On June 19, 1995, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including August 25, 1995. The

petition was filed on August 11, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In late 1979, Congress directed the Secretary of Veterans Affairs to

> design a protocol for and conduct an epidemiological study of persons who, while serving in the Armed Forces of the United States during the period of the Vietnam conflict, were exposed to any of the class of chemicals known as "the dioxins" produced during the manufacture of the various phenoxy herbicides (including the herbicide known as "Agent Orange") to determine if there may be long-term adverse health effects in such persons from such exposure.

Veterans Health Programs Extension and Improvement Act of 1979 (1979 Act), Pub. L. No. 96-151, § 307(a)(1), 93 Stat. 1097.[1] The study protocol was to be approved by the director of the congressional Office of Technology Assessment (OTA) (§ 307(a)(2)(A), 93 Stat. 1097), who was also required to report to the appropriate congressional committees on the scientific validity and objectivity of the protocol (§ 307(a)(2)(B)(i), 93 Stat. 1097). Congress also directed the President to assure that the study was coordinated with other government efforts to study the human health effects of dioxin exposure, to "assur[e] that any [such] study * * * is

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[1] As did the court of appeals (see Pet. App. 2a n.1), we use the present titles Secretary and Department of Veterans Affairs to refer to the former Veterans Administration and its Administrator.

scientifically valid and is conducted with efficiency and objectivity." § 307(c), 93 Stat. 1098.

The 1979 Act required the Secretary to provide Congress, within 24 months of approval of the protocol and annually thereafter, with "a description of the results thus far obtained under the study * * * [and] such comments and recommendations for administrative or legislative action, or both, as the [Secretary] considers appropriate in light of such results." 1979 Act § 307(b)(2), 93 Stat. 1098, as amended by the Veterans' Health Care, Training, and Small Business Loan Act of 1981 (1981 Act), Pub. L. No. 97-72, § 401(b)(1), 95 Stat. 1061. The Act further provided that the required study was to be "continued for as long after the submission of the first report under subsection (b)(2) as the [Secretary] may determine [to be] reasonable in light of the possibility of developing through such study significant new information on the long-term adverse health effects of exposure to dioxins." § 307(a)(3), 93 Stat. 1097, as amended by 1981 Act § 401(a)(2), 95 Stat. 1061.

In 1981, Congress recognized that difficulties in identifying individuals actually known to have been exposed to dioxins in Vietnam might make it difficult to conduct the study called for by the 1979 Act. See S. Rep. No. 89, 97th Cong., 1st Sess. 25 (1981). Congress therefore modified the mandate of the 1979 Act, in part to give the Secretary "discretionary authority" to "focus on service in Vietnam as the exposure circumstance being studied * * * while not, in any way, detracting from the study's focus, as already mandated, on agent orange." *Id.* at 26 (internal quotation marks omitted). The amended Act called for a study of "any long-term adverse health effects in humans of service * * * [in] Vietnam * * * as such

health effects may result from exposure to phenoxy herbicides (including the herbicide known as Agent Orange) and the class of chemicals known as the dioxins." 1979 Act § 307(a)(1)(A), as amended by 1981 Act § 401(a)(1), 95 Stat. 1061.[2]

2. The VA contracted with the federal Centers for Disease Control (CDC) to design and execute the study required by the 1979 and 1981 Acts. See C.A. App. 155. After various consultations, the CDC published an initial study protocol in November, 1983. See *id.* at 94, 99. That protocol proposed three separate studies: a Vietnam Experience Study, a Selected Cancers Study, and an Agent Orange Study. *Id.* at 102-105. Two of those component studies reflected the flexible mandate of the 1981 Act: The first compared the health of Vietnam veterans with that of other veterans, while the second examined correlations between military service in Vietnam and six types of cancer. *Id.* at 89-91. Both were successfully completed. *Ibid.*; see Pet. App. 5a n.5.

The third component study, at issue here, was designed as a direct investigation of the effects of exposure to Agent Orange. CDC's initial protocol noted that an ideal study would compare the health of a group of veterans known to have been exposed to meaningful amounts of Agent Orange with the health of an otherwise similar group who were free from such exposure. C.A. App. 100, 102. The protocol noted various problems in achieving that ideal, including the inherent limitations and uneven quality of available military records, but it proposed procedures for identifying cohorts of Vietnam veterans who

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[2] The 1979 Act, as amended, is reproduced at Pet. App. 52a-56a.

likely had and had not been meaningfully exposed to Agent Orange. *Id.* at 102-103.

The CDC recognized that those procedures were novel, and would need to be tested and validated before the main study could be undertaken. C.A. App. 107, 114E-114G. Indeed, the protocol explicitly noted that "modification, indeed even a recommendation not to proceed with an Agent Orange study, may be required after pilot study assessments." *Id.* at 107. In approving the CDC's initial protocol, the OTA expressed similar concerns about the adequacy of the proposed procedures for exposure assessment. See *id.* at 97; see also *id.* at 200-201.

The CDC did, in fact, encounter significant problems in using military records to evaluate Agent Orange exposure and to identify study cohorts of likely exposed and unexposed veterans.[3] See C.A. App. 207-208. In late 1985, the OTA expressed grave concerns about the issue, and advised several members of Congress that "[i]f there [were] no improvements, OTA [might] decide that the problems of deciding on exposure are so overwhelming that it is impossible to study the possible effects of Agent Orange." *Id.* at 207; see *id.* at 200-201. In February, 1986, the Secretary submitted to Congress the first of the progress reports required by the 1979 Act. See *id.* at 156, 167-191, 206-208. An addendum to that report described some of the difficulties that had been

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[3] Two problems caused particular concern. First, military records did not accurately indicate the location of individual soldiers on a given day, because soldiers within a company could be dispersed as much as 12 miles from the recorded company location. See C.A. App. 64, 125. Second, for many days there were no records at all, and many sprayings of Agent Orange were unrecorded. See *id.* at 45, 64-65, 59, 125.

encountered, and similarly warned that it might not be possible to carry out the Agent Orange exposure component of the overall epidemiological study required by the 1979 and 1981 Acts. See *id.* at 207-208. The Secretary's cover letter noted that leadership of the relevant congressional committees had recently asked, in light of the OTA's concerns, that no new major phase of the Agent Orange study, including contacting or examining study subjects, be undertaken until the OTA had approved a new study design and exposure assessment methodology. *Id.* at 208.

The Agent Orange Working Group (AOWG), a White House group formed to carry out the President's coordination responsibilities under the 1979 Act, convened a scientific subpanel to review the exposure assessment situation. C.A. App. 126. Based on that review, and on an independent pilot study, the subpanel concluded that the potential for misclassification of individual soldiers' exposure status was so great that it would be impossible to obtain valid results from any study in which exposure estimates were based solely on military records. *Ibid.*; see *id.* at 39, 59, 64-65. In June, 1986, the subpanel recommended that the Agent Orange study not be conducted without some independent method of verifying exposure assessments based on military records. *Id.* at 126.

That summer the CDC developed a new method of measuring directly the level of dioxin (the contaminant present in some Agent Orange that was thought most likely to cause human health effects). C.A. App. 127, 136F. That method allowed the CDC to gauge an individual's past exposure to Agent Orange by measuring the current level of dioxin, also known

as TCDD, in his blood.[4] *Ibid.* Using the new blood test, the CDC undertook a study, approved by the OTA and the AOWG scientific subpanel, designed to provide independent validation for one or more of the exposure estimation methods based on review of military records. *Ibid.*; see *id.* at 133-134C.

The TCDD validation study showed no meaningful association between Agent Orange exposure estimates derived from military records or from self-reporting and evidence of prior dioxin exposure derived from the new blood tests. C.A. App. 145; see also *id.* at 117-123, 135-145A. That result indicated that the investigators could not rely on military records to identify cohorts of veterans exposed and not exposed to dioxin. See, *e.g.*, *id.* at 120, 145. Nor did consultations with experts on military records and operations in Vietnam suggest any other method for identifying usable cohorts. *Id.* at 144. Based on those results, the CDC reluctantly concluded that it could not conduct a scientifically valid Agent Orange exposure study. *Id.* at 129-130.

After reviewing the TCDD validation study, the AOWG science panel, the VA's Department of Medicine and Surgery, and the OTA all agreed with the CDC's conclusion. See C.A. App. 66, 67-78, 152, 264-266; see also *id.* at 60-62, 79-86, 158-159. On the basis of that unanimous scientific advice, the Secretary made the final decision to cancel the Agent Orange exposure study. *Id.* at 284-285. On February 9, 1988, the Secretary notified Congress of the consensus that "no scientifically sound study [could] be undertaken." *Id.* at 262. The Secretary's letter noted that

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[4] TCDD stands for 2,3,7,8-tetrachlorodibenzo-p-dioxin. Pet. App. 4a n.3.

the other two studies proposed by the CDC's original protocol to implement the mandate of the 1979 and 1981 Acts were in progress, and that various similar research projects were underway or planned. *Id.* at 263.

On February 19, 1988, the Secretary submitted his third annual report under Section 307(b)(2) of the 1979 Act. C.A. App. 202-204, 217-231. That report again explained the reasons for termination of the Agent Orange exposure component of the overall epidemiological investigation. See *id.* at 202-204, 224-226. Two days earlier, the Secretary had brought to Congress's attention the availability of funds that had been appropriated for the conduct of the Agent Orange study, had noted that those funds would revert to the Treasury if not redesignated for other uses, and had suggested that, if Congress were to reappropriate the funds, "consideration might be given to support of the U.S. Air Force's * * * blood dioxin levels research or other research on Agent Orange and closely related subjects." *Id.* at 267-268. In November, 1988, Congress provided that

> [f]unds appropriated to the Veterans' Administration * * * and obligated through the Centers for Disease Control for a contract for the conduct of an epidemiological study relating to exposure of veterans to the herbicide known as Agent Orange shall, upon the cancellation of that contract, be available for obligation until September 30, 1989, in the amounts of—
>
> (1) $3,000,000 for payment of expenses of the Department of the Air Force in connection with blood tests of individuals who, while serving in the Air Force, participated in the

> spraying of Agent Orange in Vietnam during the Vietnam era; and
>
> (2) $1,000,000 for payment of expenses of a survey of scientific evidence, studies, and literature relating to health effects of possible exposure to toxic chemicals contained in herbicides used in the Republic of Vietnam during the Vietnam era, which survey shall be conducted by an independent scientific entity under contract to the Veterans Administration pursuant to a law enacted after the date of the enactment of this Act.

Veterans' Benefits Improvement Act of 1988, Pub. L. No. 100-687, Div. B, § 1201, 102 Stat. 4125.

3. In August, 1990, petitioners brought this suit seeking to compel the government to conduct the Agent Orange exposure study that had been cancelled in early 1988. The district court granted the defendants' motion for summary judgment and dismissed the case. Pet. App. 30a-49a. The court first determined that the action under review was the Secretary's final decision to terminate the Agent Orange exposure study (*id.* at 38a-40a), and largely denied petitioners' motion to supplement the administrative record (*id.* at 40a-43a). Having reviewed in detail the history of the VA's efforts to conduct the Agent Orange study (see *id.* at 32a-35a, 45a-46a), the court then concluded that "neither the scientific conclusions leading up to the VA's decision to terminate the study nor the [Secretary's] final decision were 'arbitrary and capricious' " (*id.* at 46a) within the meaning of the Administrative Procedure Act, 5 U.S.C. 706(2)(A). Finally, the court rejected petitioners' contention that the cancellation was

"otherwise not in accordance with law" (*ibid.*). Pet. App. 46a-47a. Noting the Act's requirement that the President assure that any study undertaken be scientifically valid, the court upheld as reasonable the Secretary's conclusion that his periodic reports to Congress fulfilled the requirements of Section 307(b)(2) of the 1979 Act, and that he therefore had the authority, under Section 307(a)(3) of the Act, to terminate the Agent Orange study in 1988 after determining that it could not be conducted in a scientifically valid manner. Pet. App. 46a-47a.

The court of appeals affirmed. Pet. App. 1a-27a. That court also reviewed the history of the Agent Orange exposure study at considerable length. *Id.* at 3a-12a. Like the district court, the court of appeals accepted the Secretary's interpretation of the statutory reporting requirement (*id.* at 13a-18a), and "conclude[d] that the Secretary satisfied his initial reporting obligation under § 307(b)(2) of the 1979 Act when he submitted a report to Congress on February 13, 1986, describing the results of efforts to carry out the epidemiological study" (*id.* at 18a). The court also rejected petitioners' contention that the Secretary had applied the wrong statutory standard in deciding to terminate the Agent Orange study. *Id.* at 18a-22a.

Finally, the court agreed with the district court that the Secretary did not act arbitrarily or capriciously in determining that the proposed Agent Orange exposure component of the overall epidemiological investigation required by the 1979 and 1981 Acts could not be carried out in a scientifically valid manner. Pet. App. 22a-27a. To the contrary, "[b]ased on the data available to [him] in February 1988, * * * the Secretary could reasonably conclude that it was impossible to identify groups of Vietnam veterans

who were similar except for their levels of dioxin exposure, as required for the cohort tests necessary to ascertain the health effects of dioxins through a scientifically valid Agent Orange Study." *Id.* at 26a-27a.

ARGUMENT

1. Petitioners argue (Pet. 16-22) that the Secretary violated a statutory mandate when he cancelled the Agent Orange exposure study component of the overall epidemiological investigation proposed by the CDC's initial 1983 protocol. The court of appeals correctly rejected that contention. Pet. App. 13a-18a.

Section 307(a)(1)(A) of the 1979 Act, as amended by the 1981 Act, required an epidemiological study of long-term human health effects that might have resulted from Vietnam veterans' exposure to Agent Orange or other herbicides, and particularly to any dioxin that was produced during the manufacture of those herbicides. See Pet. App. 52a. The study protocol was to be approved, and its implementation "monitor[ed]," by the Director of the congressional OTA, who was to advise Congress of his conclusions regarding the protocol's "scientific validity and objectivity." 1979 Act § 307(a)(2), 93 Stat. 1097; Pet. App. 53a. Similarly, Congress directed the President to coordinate the study required by the statute with other federal government research efforts concerning the human health effects of dioxin exposure, "[f]or the purpose of assuring that any [such] study carried out by the Federal Government * * * is scientifically valid and is conducted with efficiency and objectivity." 1979 Act § 307(c), 93 Stat. 1098; Pet. App. 55a. Finally, Congress called for annual reports from the Secretary describing "the results thus far

obtained under the study conducted" under Section 307(a)(1)(A), and provided that the study should be "continued for as long after the submission of the first report * * * as the [Secretary] may determine [to be] reasonable in light of the possibility of developing through such study significant new information on the long-term adverse health effects of exposure to dioxins." 1979 Act § 307(b)(2), 93 Stat. 1098; 1979 Act § 307(a)(3), 93 Stat. 1097, as amended by 1981 Act § 401(a)(2), 95 Stat. 1061; Pet. App. 54a.

These provisions make clear Congress's desire that the mandated and funded research be "scientifically valid," and that it lead, if possible, to "significant new information." In seeking to fulfill that mandate, the VA, through the CDC, initially proposed three separate studies, two of which have since been successfully completed. Pet. App. 5a & n.5. In the case of the Agent Orange exposure study at issue here, however, the CDC's proposed protocol explicitly recognized that "many of the proposed procedures" for identifying usable cohorts of exposed and unexposed veterans were "untested," and noted that, for that reason, "modification, [or] indeed even a recommendation not to proceed with an Agent Orange study, [might] be required after pilot study assessments." C.A. App. 107. The OTA's approval of the initial protocol was made in light of that reservation. See, *e.g.*, *id.* at 97; see also *id.* at 200-201; cf. Pet. 8 n.9.[5] It is implausible

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[5] In 1985, the OTA Director wrote to Senator Leahy of the Senate Appropriations Committee concerning OTA's "continuing review of progress" of the Agent Orange exposure study. C.A. App. 200-201. Among other things, that letter quoted the language cited above from the CDC's initial protocol, and noted that "[w]hen the original Agent Orange study design was approved by the OTA, there were still many

that Congress intended to require the Secretary to proceed with that study when, after years of concerted effort to develop and validate an acceptable final protocol, the CDC scientists working on the study, the OTA scientists charged with "approv[ing]" and "monitor[ing]" it, the science subpanel of the White House working group charged with "coordinat[ing]" all similar research and assuring its "scientific[] valid[ity,] * * * efficiency and objectivity," and the Secretary's own science advisors had all concluded that it could not be conducted in a scientifically valid manner. See pages 5-8, *supra*.

In arguing to the contrary, petitioners focus on the word "results" in Section 307(b)(2) of the 1979 Act. Pet. App. 16-21. They contend that the term "result" means only "the final product or conclusion of a process" (Pet. 17), and that Congress must have intended to require the Secretary to continue the Agent Orange exposure study until he could file at least one report under Section 307(b)(2) including "health results" (Pet. 19)—that is, health information collected from veterans—before he could terminate

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unanswered questions and uncertainties which only would be resolvable when representative data from the military records had been assembled." *Id.* at 200. In light of subsequent work with the available military records, the OTA believed that the "CDC should now be able to make some final decisions about study design and about the quality of the exposure data on which the study results will be based," and the OTA therefore "request[ed] a new statement of study design, incorporating, as necessary, new plans for exposure assessment." *Id.* at 200-201. Because the OTA would require more time "to consider [a] revised Agent Orange study protocol for approval," the Director urged that "no major new phase of the study should be undertaken before the new design and exposure assessment method are found acceptable." *Id.* at 201.

the study as unlikely to develop "significant new information." 1979 Act § 307(a)(3), 93 Stat. 1097; Pet. App. 54a. Since the time of his first report to Congress under Section 307(b)(2), however (see Pet. App. 14a n.11), the Secretary has construed the statute to require only a report on the "results thus far obtained" from the VA's good-faith effort to test, refine, and finalize the proposed but "untested" (C.A. App. 107) CDC protocol for the exposure study.

The court of appeals upheld that construction. Pet. App. 13a-18a. The court remarked (*id.* at 14a-15a) that the word "results" is "one of common parlance subject to multiple meanings," and the term is broad enough to include, for example, the problems identified (and reported to Congress) with the use of military records alone to identify exposed and unexposed veterans, and the conclusion of the TCDD validation study that current blood serum levels of dioxin bore no meaningful relation to any of the records-based exposure estimates. Alternatively, the Secretary satisfied Section 307(b)(2) when he reported periodically to Congress, in effect, that *no* "results" had "thus far [been] obtained under the study" in question, because of the methodological problems encountered in attempting to get the study underway. Petitioners' construction of Section 307, on the other hand, would apparently have required the Secretary to compile and report medical data about a large group of veterans ("health results"), even if it were clear that the study would ultimately conclude that those data could not be meaningfully analyzed, because it was impossible to divide the overall group reliably into exposed and unexposed cohorts.

The court of appeals carefully considered, and rejected, all of petitioners' statutory arguments. Pet.

App. 16a-18a. That decision does not conflict with the decision of any other court of appeals, and no such conflict is ever likely to arise (see Pet. 15); nor does it raise any legal issue of broad application beyond the particular statute at issue in this case. Cf. *Ticor Title Ins. Co.* v. *Brown*, 114 S. Ct. 1359, 1362 (1994) (per curiam); *Dobbs* v. *Zant*, 113 S. Ct. 835, 837 (1993) (Scalia, J., concurring in the judgment).

2. Petitioners argue (Pet. 21-22) that the court of appeals' reliance on *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), conflicts with this Court's "rule that interpretive doubt is to be resolved in the veteran's favor." *Brown* v. *Gardner*, 115 S. Ct. 552, 555 (1994). The two principles may not, in fact, conflict. See, *e.g.*, *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) ("Our problem is to construe the separate provisions of the Act as parts of an organic whole and give each as liberal a construction for the benefit of the veteran *as a harmonious interplay of the separate provisions permits*.") (emphasis added). In all events, this would be an inappropriate case in which to resolve any conflict between them.

First, petitioners made no such argument in either court below. Second, and perhaps for that reason, neither court below addressed the issue, and this Court therefore would not have the benefit of those courts' views on the question, either in general or as related to the facts of this case. Third, all the cases that petitioner cites (Pet. 21) involve statutes providing easily identifiable benefits or protections for individual veterans. In this case, on the other hand, it is not clear why it would benefit veterans to force the Secretary to conduct a study that all the

government experts designated by Congress agreed would not yield valid results.

3. Petitioners argue (Pet. 23-30) that the Secretary's decision to cancel the Agent Orange exposure study was arbitrary and capricious. That claim cannot withstand review of the record in this case.

As the court of appeals correctly pointed out (Pet. App. 12a-13a), review of the Secretary's ultimate decision to cancel the exposure study is properly limited to determining whether the Secretary "examine[d] the relevant data" and then acted on the basis of a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of the United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Moreover, "[g]iven the nature of the scientific expertise brought to bear on the issue of whether to continue the [CDC's exposure study], the court's review is at its most deferential." Pet. App. 13a, citing *Baltimore Gas & Elec. Co.* v. *Natural Resources Defense Council, Inc.*, 462 U.S. 87, 103 (1983). Finally, the court determined that, in light of the explicit discretion to terminate conferred on the Secretary under Section 307(a)(3) of the 1979 Act, "the scope of * * * review of the Secretary's decision to abandon one component of the [CDC's 1983 proposed overall protocol] is particularly limited." Pet. App. 22a.

In evaluating the Secretary's decision, the court of appeals reviewed in considerable detail the history of the VA's efforts to design and implement the exposure study, and of the Secretary's ultimate decision to terminate it. Pet. App. 5a-11a, 22a-27a; see also pages 4-8, *supra*. Petitioners' arguments, in this Court as in the courts below, amount to a challenge to technical conclusions unanimously reached, over a

period of several years, by the scientific advisors who considered the issue of study validity independently at the CDC, the OTA, the White House, and the VA. The record leaves no doubt that the Secretary's final decision to terminate the exposure study was neither unexamined nor irrational.

Finally, the record makes clear that Congress was fully apprised, on an ongoing basis, of the problems that were encountered in attempting to design and implement the Agent Orange exposure study. See, *e.g.*, pages 5-6, *supra*. Indeed, when they were informed by the OTA that exposure verification problems had proven difficult and perhaps intractable, the leaders of the relevant congressional committees themselves requested that " 'no new major phase of the study, including contacting or examining study subjects[,]' be undertaken until OTA ha[d] approved the new study design and exposure assessment methodology" that it was hoped could be developed. C.A. App. 208 (Secretary's letter transmitting first status report, quoting letter of January 10, 1986, from House Veterans' Affairs Committee leadership to the Secretary of Health and Human Services, and citing similar letter from Senate committee leadership to HHS and the President); see also note 5, *supra*.

It is therefore not surprising that, when the Secretary made his final decision to cancel the study, Congress took no action to countermand that decision. To the contrary, it accepted the Secretary's invitation to take the money previously allocated to the exposure study and reappropriate it for other, related uses. See pages 8-9, *supra*. Under those circumstances, the contention that the Secretary's decision has deprived veterans of a "chance Congress

intended" (Pet. 16) is better directed to Congress than to this Court.[6]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[6] Petitioners refer repeatedly to a recent report published by the National Academy of Sciences (NAS) (several years after the administrative decision at issue in this case) concerning the health effects of herbicides used in Vietnam. See, *e.g.*, Pet. 4 n.3. We are informed that, partly in response to that report, the VA recently engaged the NAS to develop and disseminate a request for proposals to create a "historic exposure reconstruction model for herbicides in Vietnam." The NAS's overall proposal contemplates future funding for evaluation of proposals received, selection of a group to develop such a model, oversight of the development process, and evaluation of any model ultimately developed. The VA's initial funding for this proposal indicates a continuing willingness to explore whether newly developed methodologies will now permit researchers to gather, in a scientifically valid manner, the sort of information originally sought by the 1979 and 1981 Acts.